

SAMUEL P. BARR, SR.

IBLA 82-628

Decided June 29, 1982

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring an unpatented placer mining claim abandoned and void. F 64227.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Relocation --

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

APPEARANCES: Joel A. Rothberg, Esq., Kotzebue, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Samuel P. Barr, Sr., appeals the February 18, 1982, decision of the Alaska State Office, Bureau of Land Management (BLM), which declared the unpatented Kivalina River Gold Mining Association placer mining claim, F 64227, abandoned and void because no proof of labor or notice of intention to hold the claim was filed with BLM by October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The decision asserted the claim had been located April 15, 1970, and the copy of the location notice was filed with BLM October 15, 1979.

Appellant argues that the location notice filed with BLM October 15, 1979, was for a location made October 9, 1979, and that under FLPMA, no proof of labor was required to be filed with BLM until 1980.

[1] Section 314 of FLPMA requires that a proof of labor or a notice of intention to hold an unpatented mining claim located after October 21, 1976, be filed with the proper office of BLM on or before December 30 of the calendar year following the year in which the claim was located.

The record shows that on October 15, 1979, appellant submitted copies of two location notices to BLM District Office, Fairbanks. One was for a location made April 15, 1970, for a parcel of land 2,640 feet by 2,640 feet, lying on both sides of the Kivalina River, which approximately bisected the claim. The location notice names only Samuel P. Barr as locator. The second notice, styled "AMENDED" mining claim location notice, shows the date of posting the notice as October 9, 1979, for a parcel of land 2,640 feet by 2,640 feet lying on both sides of the Kivalina River. This notice named Samuel Barr, Janet Barr, Mike Barr, Rep. Barr, Gilford Barr, Alice Reuben, Gilbert Barr, and Martha Barr as locators. Each location embraced a tract of 160 acres.

The statutory authority for location of placer mining claims is contained in 30 U.S.C. § 35 (1976). That section clearly limits the amount of land which may be located to 20 acres for each individual claimant. However, eight or more persons may associate to locate a placer mining claim occupying 160 acres. The courts have held that as a general rule an excessive location of a placer mining claim does not render the entire claim void, but it is void as to the excess beyond the statutory 20 acres for each named locator. See, e.g., Adams v. Yukon Gold Co., 251 F. (9th Cir. 1918); Jones v. Wild Goose Mining & Trading Co., 177 F. 95 (9th Cir. 1910); Zimmerman v. Funchion, 161 F. 859 (9th Cir. 1908).

As the location notice for the placer mining claim located April 15, 1970, described 160 acres but named only one locator, the claim was void from the outset as to 140 acres. The location notice for the placer mining claim located October 9, 1979, similarly described 160 acres but named eight locators, so that it was acceptable under 30 U.S.C. § 35 (1976). However, to the extent the original claim was not void from its inception (20 acres), it became void when appellant failed to file either evidence of assessment work or a notice of intention to hold prior to October 22, 1979, as required under section 314(a) of FLPMA.

BLM should consider the location notice filed on October 9, 1979, as a new location dating from October 9, 1979, and under the mandate of FLPMA, should examine the records to determine whether evidence of assessment work was timely filed in calendar year 1980. 1/

The decision does not reach the question of whether the land embraced in the location of October 9, 1979, was open to operation of the mining laws on that date.

1/ The record before us does not contain any evidence of assessment work or a proper notice of intention to hold the claim filed during calendar year 1980, though appellant's attorney alleges that it was. There is, however, in the case file of F 63455, an affidavit of annual labor for Kivalina River Gold Mining Association placer claim executed by Samuel P. Barr, Sr., and filed with BLM Dec. 20, 1980. F 63455 is case file for Kivalina River Mining Association lode mining claim. Upon receipt of the case files, BLM should make the necessary adjustment of the document.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM for appropriate consideration consonant with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

